

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

In re) Case No. 14-31229-SGJ-15
) Dallas, Texas
)
MTGOX, CO., LTD.,)
a/k/a MTGOX KK,)
)
Debtor.) September 10, 2014
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TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE STACEY G. C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Nobuaki Kobayashi:

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1 THE COURT: Please be seated.

2 All right. We are ready to begin a status conference
3 we have set in the MtGox matter, case number 14-31229.

4 Let's start out by getting appearances from the
5 lawyers in the courtroom.

6 MR. SAVAL: Good afternoon, Your Honor. Daniel Saval
7 from Brown Rudnick on behalf of the foreign representative,
8 Mr. Kobayashi.

9 THE COURT: Okay.

10 MR. SAVAL: I believe my partner, David Molton, is
11 participating by phone, Your Honor.

12 THE REPORTER: Your Honor, I can't hear --

13 THE COURT: All right.

14 THE REPORTER: Sorry.

15 THE COURT: Yes. If during this hearing everyone
16 could make sure they speak into the mic, because the people on
17 the phone I don't think hear. So did everyone hear that, that
18 was an appearance by Mr. Saval?

19 All right. Mr. Molton, are you there on the phone?

20 MR. MOLTON: Your Honor, I am here on the phone.
21 Good afternoon. David Molton, Brown Rudnick, for the foreign
22 representative.

23 THE COURT: Okay, thank you. Other appearances in
24 the courtroom.

25 MR. PHELAN: Robin Phelan, Haynes and Boone, for the

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1 class action plaintiffs.

2 THE COURT: All right. Is there anyone else on the
3 phone?

4 MR. TOWNSEND: Your Honor, Roger Town --

5 THE COURT: Go ahead.

6 MR. TOWNSEND: I'm sorry. Roger Townsend on behalf
7 of CoinLab in the Seattle litigation.

8 THE COURT: Okay, thank you. Anyone else on the
9 phone?

10 MR. ENGEL: Yes. Your Honor, Larry Engel, Morrison &
11 Foerster, for CoinLab.

12 THE COURT: Okay, thank you.

13 MR. PENN: Your Honor, John Penn, Perkins Coie on
14 behalf of EPub Bud, LLC.

15 THE COURT: Okay. Anyone else wanting to appear by
16 phone?

17 All right. Well, Mr. Saval, I think I'm going to
18 start with you. We're now about six months into this Chapter
19 15 case, and we entered an order for recognition, I believe it
20 was in June of this year, and at that time set a status
21 conference out in the future to basically hopefully get a
22 report at this time what's going on in the Japanese
23 proceeding --

24 MR. SAVAL: Um-hum, um-hum.

25 THE COURT: -- what's going on with the company,

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1 what's going on, I guess, with the Illinois litigation, the
2 Washington litigation, to the extent anything is. So I'll
3 hear from you.

4 MR. SAVAL: Yes, Your Honor, I'm prepared to address
5 all those issues.

6 THE COURT: Okay.

7 MR. SAVAL: Perhaps we could start with the Chapter
8 15 case --

9 THE COURT: Okay.

10 MR. SAVAL: -- and matters in the U.S., and then
11 travel over to Japan, where I'm prepared to provide an update
12 as to what's going on --

13 THE COURT: All right.

14 MR. SAVAL: -- over there.

15 THE COURT: Very good.

16 MR. SAVAL: The last time we were before Your Honor
17 was the recognition hearing, and this Court did grant the
18 order recognizing the Japanese bankruptcy proceeding as a
19 foreign main proceeding.

20 One thing I'd note, Your Honor, is if you'll recall,
21 we have a stipulation with the class plaintiffs represented by
22 Mr. Phelan in these proceedings, where they have reserved the
23 right within a certain time period to challenge whether venue
24 is appropriate within this court.

25 I'd just note for Your Honor, that they did not file

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1 a motion requesting a transfer of venue, and therefore venue
2 is established in this case. And we understand there's no
3 live objection to venue at this time.

4 THE COURT: Okay. The deadline was what, per that
5 stipulation?

6 MR. SAVAL: It was thirty days from the date of the
7 stipulation --

8 THE COURT: Okay.

9 MR. SAVAL: -- which was signed on June 9th.

10 THE COURT: Okay. Okay. All right. I think CoinLab
11 was maybe a party to that as well, correct, or --

12 MR. SAVAL: They were. They had reserved for
13 themselves the right to challenge venue in the event that the
14 class action plaintiffs moved to transfer venue.

15 THE COURT: Okay.

16 MR. SAVAL: So because the class action plaintiffs
17 did not move, then our understanding is their rights lapsed as
18 well --

19 THE COURT: Okay. Okay.

20 MR. SAVAL: -- to take a position on the issue --

21 THE COURT: All right.

22 MR. SAVAL: -- or to challenge venue.

23 THE COURT: All right.

24 MR. SAVAL: Otherwise, Your Honor, there are no
25 pending matters at this time before this Chapter 15 case.

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1 Most of the activity in connection with the liquidation
2 proceedings is happening over in Japan, which is natural,
3 because that's where the foreign main proceeding is pending.

4 But one note I would make for Your Honor. If you'll
5 recall from prior discussion and from our recognition papers,
6 the United States Department of Justice had seized
7 approximately five million dollars of MtGox funds that were
8 held in U.S. accounts.

9 THE COURT: Um-hum.

10 MR. SAVAL: We have had preliminary discussions with
11 the Department of Justice to discuss a potential resolution of
12 that matter. Those discussions are still preliminary, and at
13 this time I don't have any material developments to report --

14 THE COURT: Okay.

15 MR. SAVAL: -- in that regard.

16 I'd also note, Your Honor --

17 THE COURT: And that had happened pre-petition on --

18 MR. SAVAL: That's right, Your Honor.

19 THE COURT: Okay.

20 MR. SAVAL: Those funds had been seized, I believe,
21 in May of last year --

22 THE COURT: Okay.

23 MR. SAVAL: -- well before the bankruptcy case --

24 THE COURT: Okay.

25 MR. SAVAL: -- had been commenced --

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1 THE COURT: Okay.

2 MR. SAVAL: -- earlier this year.

3 And although the automatic stay is now in effect as a
4 consequence of recognition, we continue to make ourselves
5 available to the parties that have been active within the
6 U.S., namely the class action plaintiffs in the Illinois
7 proceedings, and CoinLab that's involved in litigation in
8 Seattle.

9 We've appeared at status conferences on the class
10 action proceedings before the Illinois District Court. Where
11 those proceeding stand, as Your Honor is aware, there was a
12 settlement proposal that essentially involved a third party
13 called Sunlot coming in and making an offer, a plan proposal,
14 that would form the basis of a settlement of that class action
15 proceeding. That settlement was, of course, contingent on Mr.
16 Kobayashi engaging the class action plaintiffs on that plan
17 proposal and moving forward with it before the Tokyo court,
18 the supervising court. And so that process is underway. And
19 I'll get to in a little bit what Mr. Kobayashi is doing with
20 respect to investigating a potential sale of the MtGox --

21 THE COURT: Okay.

22 MR. SAVAL: -- exchange.

23 In addition, Your Honor, a few weeks ago we worked
24 for the parties in the CoinLab litigation that is pending
25 before the Seattle Federal District Court, to provide a status

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1 report to that court which requested that the parties continue
2 to update the judge in Seattle as to the status of the
3 bankruptcy proceedings.

4 Your Honor, that wraps up what I think is relevant in
5 terms of activities going on here in the U.S., and now I'm
6 going to move on what's going on in Japan.

7 THE COURT: Okay.

8 MR. SAVAL: Unless Your Honor has any questions about
9 the U.S. matters?

10 THE COURT: No. Well, just clarify again on CoinLab,
11 I wasn't quite clear on what, if anything, had happened. If
12 you could just repeat what you said?

13 MR. SAVAL: Yeah. The court had requested of the
14 parties -- the parties to that litigation are CoinLab being
15 the plaintiff, and MtGox and Tibanne, the parent company to
16 MtGox, as defendants.

17 THE COURT: Um-hum.

18 MR. SAVAL: And the court had requested periodic
19 updates from the parties as to the status of the MtGox
20 bankruptcy proceedings. And I think the judge had requested
21 that because the judge understands there's a stay --

22 THE COURT: Right.

23 MR. SAVAL: -- as against MtGox. And the judge had
24 also entered an administrative stay of the action against
25 Tibanne.

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1 THE COURT: Okay.

2 MR. SAVAL: I would note that I believe CoinLab has
3 recently moved to lift the stay --

4 THE COURT: Okay.

5 MR. SAVAL: -- as against Tibanne.

6 THE COURT: Okay.

7 MR. SAVAL: Clearly, they're not moving to lift the
8 stay against us --

9 THE COURT: Right.

10 MR. SAVAL: -- they'd have to do it before --

11 THE COURT: Um-hum.

12 MR. SAVAL: -- this Court.

13 THE COURT: Okay.

14 MR. SAVAL: And I understand that motion is pending.

15 THE COURT: Okay, all right.

16 MR. SAVAL: With respect to the developments in
17 Japan, I'd note that on July 23rd Mr. Kobayashi held the first
18 general meetings of creditors where he provided a report on
19 the status of the liquidation. That report was subsequently
20 posted to the MtGox Web site.

21 THE COURT: Okay.

22 MR. SAVAL: If Your Honor would like a copy I do have
23 them available. So --

24 THE COURT: A copy of the --

25 MR. SAVAL: Of the report --

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1 THE COURT: -- report.

2 MR. SAVAL: -- that was handed up to creditors?

3 THE COURT: Yes, I would.

4 MR. SAVAL: May I approach?

5 THE COURT: You may. So you were probably about to
6 do this, but explain to me how the first meeting of creditors
7 works in Japan. I'm not used to a trustee giving a report.

8 MR. SAVAL: Yeah. So, it essentially was exactly
9 that, for Mr. Kobayashi to speak to creditors publicly --

10 THE COURT: Okay.

11 MR. SAVAL: -- about information that was appropriate
12 to disclose on a public basis.

13 THE COURT: Okay.

14 MR. SAVAL: And that did involve him providing some
15 update on the investigation --

16 THE COURT: Okay.

17 MR. SAVAL: -- and to disclose to creditors,
18 customers and other parties-in-interest, that he had retained
19 the Deloitte firm to pursue the forensic investigation --

20 THE COURT: Okay.

21 MR. SAVAL: -- that has begun and is ongoing. I can
22 report there's a large volume of data that the Deloitte team,
23 and Mr. Kobayashi's team in Japan are wading through and
24 analyzing.

25 Your Honor, as we previously advised, Mr. Kobayashi

1 had set a -- with the approval of the Tokyo court -- a
2 November 28th a deadline to file proofs of claim --

3 THE COURT: Okay.

4 MR. SAVAL: -- within the Japanese proceedings.
5 Around the time of the creditor meeting that deadline was
6 extended to May 29th of next year.

7 THE COURT: Wow.

8 MR. SAVAL: And let me just tell you the reasons --
9 the main reasons for that.

10 THE COURT: Okay.

11 MR. SAVAL: And this was approved by the Tokyo court.

12 The main reason was to give the bankruptcy trustee
13 additional time to craft a claim form that would be
14 appropriate for customers that are located in many different
15 jurisdictions all over the world. We're not talking about
16 just a handful of countries, we're talking about creditors and
17 customers speaking many different languages in many different
18 jurisdictions.

19 Another issue that plays into the additional time
20 that's necessary, is Mr. Kobayashi needs to make a
21 determination, subject to the approval of the Tokyo district
22 court, as to how he's going to distribute the assets of the
23 estate, one of the issues being whether to make distributions
24 in kind.

25 Specifically, Mr. Kobayashi disclosed at the

1 creditors' meeting, that he's considering whether it's more
2 beneficial to distribute the bitcoin on hand in matters
3 subsequently discovered through -- in the investigation,
4 distribute those to customers and creditors in lieu of
5 liquidating those bitcoin and distributing the cash proceeds
6 thereof.

7 We understand there has been a favorable response
8 from customers as to proceeding in that manner, but the issue
9 is still under consideration and subject to ultimately a
10 decision of the Tokyo district court.

11 THE COURT: Is there a motion pending at this time on
12 that?

13 MR. SAVAL: There's not a motion --

14 THE COURT: Okay.

15 MR. SAVAL: -- pending, Your Honor --

16 THE COURT: Okay.

17 MR. SAVAL: -- as to the manner of distribution.

18 THE COURT: Okay.

19 MR. SAVAL: Mr. Kobayashi and his team, as I
20 mentioned previously, have also been focused on a process to
21 sell the exchange. He and his team have been engaged with
22 several potential purchasers. He's been currently in the
23 midst of a diligence process with those purchasers, and has
24 been conducting meetings with them.

25 I believe all of the potential buyers are parties to

1 nondisclosure agreements which prevents me getting into
2 publicly the details of where everything stands. But I can
3 disclose to this Court that Mr. Kobayashi is intent on
4 selecting a buyer as soon as reasonably possible, and wants to
5 move forward with that as soon as he can move forward and
6 complete the diligence process that he has underway.

7 THE COURT: Okay. Just educate me, is the process
8 that is typically undertaken in Japan anything like our 363
9 process, where perhaps you put a motion out there to approve
10 an auction process and bidding procedures, and get a stalking
11 horse --

12 MR. SAVAL: Yeah.

13 THE COURT: -- or no?

14 MR. SAVAL: Yeah. It's my understanding that things
15 are run slightly different there. I don't believe that there
16 is an auction process, but I can't confirm exactly how the
17 deal is going to be consummated. The discussions have been
18 largely informal, at this point. No selection has been made.
19 Clearly, the decision as to moving forward with a buyer, if a
20 transaction will be consummated, will be subject to the
21 approval of the district court.

22 THE COURT: Okay, all right.

23 MR. SAVAL: We do understand the assets that would
24 likely be sold, although this is still subject to definitive
25 documentation and reaching an agreement with the purchaser,

1 would be the customer information that's necessary to run the
2 exchange, that customer information being used by a business
3 located and operated from Japan.

4 Your Honor, I'd further note that there's a
5 subsequent creditor meeting scheduled in Tokyo for November
6 26th. It's expected that Mr. Kobayashi will have a further
7 update for creditors, both in terms of the process of selling
8 the exchange, in terms of the investigation, and in terms of
9 the claims process.

10 THE COURT: Okay.

11 MR. SAVAL: So, Your Honor, I think I've covered
12 everything I intended to cover by way of an update to the
13 Court.

14 THE COURT: Okay. So it sounds like there really
15 aren't any pending motions going on there right now in Japan,
16 or there really aren't much in the way of court hearings.
17 It's pretty much --

18 MR. SAVAL: Yeah. The court --

19 THE COURT: -- just administrative trustee work at
20 this point.

21 MR. SAVAL: Yeah. The court process is a little
22 different over in Japan. Mr. Kobayashi is required to confer
23 with and speak with the Tokyo District Court. It's very
24 common in other jurisdictions which maintain a supervisor role
25 over trustees or liquidators. And so I know there's a meeting

1 tomorrow, for example, that Mr. Kobayashi has with the Tokyo
2 District Court. I understand that meeting is in private. But
3 that's given the nature of the role that's played by the court
4 in having to supervise the activities of the trustee.

5 THE COURT: Okay. So it's not --

6 MR. SAVAL: And it's common in other jurisdictions as
7 well.

8 THE COURT: -- an open, on-the-record, hearing?

9 MR. SAVAL: Those are meetings. Those are meetings.
10 And, clearly, public disclosure has come through the meetings,
11 come through the MtGox Web site.

12 THE COURT: Okay.

13 MR. SAVAL: Updates are provided on a rolling
14 continual basis.

15 I can tell Your Honor that now customers can access
16 the Web site to get their balance information as to the
17 amounts that at least are on record with MtGox as being what
18 their account balance is. Mr. Kobayashi continues to provide
19 disclosures on that Web site. As I mentioned, there'll be
20 another meeting in Japan in a few months.

21 THE COURT: Okay.

22 MR. SAVAL: And the report lays out in some greater
23 detail in terms of what's been done, provides disclosures as
24 to the assets that he has on hand. He's been focused on
25 repatriating cash located around the world, and centralizing

1 those, and obviously pursuing the investigation which is
2 critical to determining where the missing bitcoin are.

3 THE COURT: Um-hum. And, obviously, I'll have to
4 read this report, but does it shed anymore light on that as
5 far as have the Deloitte investigations revealed anything we
6 haven't earlier known about?

7 MR. SAVAL: Well, it's very much in its infancy, Your
8 Honor. Mr. Kobayashi took over the reins at the end of April,
9 so we're still only a couple of months into this. The
10 specifics as to where they are with the investigation is still
11 very much isolating the data, compartmentalizing it. And I
12 understand there's a large volume of information and data that
13 they need to go through.

14 THE COURT: Okay.

15 MR. SAVAL: And this is a very unique situation, a
16 very unique case, issues of first impression with virtual
17 currency. But his team, assisted by Deloitte, had been
18 working to pursue that --

19 THE COURT: Okay.

20 MR. SAVAL: -- with all deliberate speed.

21 THE COURT: But no actual answers yet, no actual
22 recovery of any of the missing bitcoins?

23 MR. SAVAL: Of the -- not yet, Your Honor. Not yet.

24 THE COURT: Okay. All right. Any demands or
25 lawsuits, or anything -- as far as recovery, any demands made

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1 on anyone, any lawsuits? I'm assuming no from your report,
2 but --

3 MR. SAVAL: No, no, no. In terms of the bitcoin, no.

4 THE COURT: Okay. What about Mr. Karpeles, is he
5 having a role in any of this?

6 MR. SAVAL: Mr. Karpeles has an obligation under the
7 Japan Bankruptcy Act to assist Mr. Kobayashi to the extent
8 that Mr. Kobayashi believes his input is necessary. So he's
9 essentially at Mr. Kobayashi's disposal. He has no role in
10 management; he's been cut off from access to MtGox data.

11 THE COURT: Okay.

12 MR. SAVAL: So he has no role in the investigation.
13 But to the extent that Mr. Kobayashi believes his services or
14 his knowledge is necessary, he's required under Japanese law
15 to cooperate.

16 THE COURT: Okay. All right.

17 MR. SAVAL: And, certainly, the role that Mr.
18 Karpeles played within MtGox in the loss of bitcoin is
19 something that will need to be investigated, and that's part
20 of what's going on.

21 THE COURT: Okay. Just one or two last questions. I
22 had in my notes that at least the last time we were here Mr.
23 Kobayashi had collected something like 7.5-million fiat cash,
24 equivalent to U.S. dollars, from various bank accounts from
25 around the world. Is that still pretty much where it stands,

1 or has there been more, by chance?

2 MR. SAVAL: There is more, Your Honor. I think
3 within the last week there was an order that was granted by a
4 court in the British Virgin Islands, where one of the service
5 providers was located -- I believe the name was BocaPay --
6 that released approximately five or six million dollars --

7 THE COURT: Okay.

8 MR. SAVAL: -- closer to six million dollars, that's
9 been turned over to the bankruptcy trustee.

10 THE COURT: Okay.

11 MR. SAVAL: And I understand it's been repatriated to
12 Japan.

13 THE COURT: All right, very good.

14 All right. Well, a preview of anything that we might
15 be expecting to happen in this case as far as is the trustee
16 going to need to file any motions, take any discovery, need
17 any assistance from this Court in the near future?

18 MR. SAVAL: No. At this point, Your Honor, we're
19 waiting to see what happens in Japan on the fronts that I
20 mentioned, particularly the investigation and the sales
21 process. And if we're required under Chapter 15, or we
22 consider it necessary to avail ourselves of the rights under
23 Chapter 15, we'll be back before Your Honor. At this time
24 nothing is specifically contemplated.

25 Clearly, the Chapter 15 was filed -- the primary

1 reason that the Chapter 15 was filed was to get the benefit of
2 the stay, so that creditors around the world would be treated
3 fairly, and it would all be on the same level playing field.
4 And Mr. Kobayashi wants to maintain this Chapter 15 case,
5 including for that purpose, but we -- there still may be
6 developments that need to be brought to this Court and relief
7 that we may need to seek. But at this point, there's nothing
8 immediately we contemplate bringing to this Court.

9 If Your Honor would like, we can schedule a
10 subsequent status conference just to provide this Court with a
11 further update as to where things stand, perhaps in the next
12 sixty or ninety days, I'll leave it to Your Honor as to when
13 you think it would be appropriate for us to be back, in light
14 of any further developments.

15 THE COURT: Well, my initial reaction is if there's
16 going to be another creditor meeting in Japan, November 26th,
17 maybe the week or so after that, to see what transpires.

18 MR. PHELAN: Your Honor, we would very much like to
19 have another status conference in about thirty days.

20 THE COURT: Okay. Well, Mr. Phelan, why don't you
21 come up to the podium, at this point, and give me any thoughts
22 you have and why -- you're approaching the bench with
23 something. Oh, okay. Well, I want the people on the phone to
24 hear you --

25 MR. PHELAN: Oh.

1 THE COURT: -- so when I said come up here, I meant
2 to the podium actually.

3 All right.

4 MR. PHELAN: I misunderstood, Your Honor.

5 THE COURT: Okay. First, why don't you tell me why
6 your clients, the Greene plaintiffs, would like something
7 sooner? What are you expecting, you want to talk about?

8 MR. PHELAN: Well, Your Honor, the case has been
9 pending since March. Mr. Kobayashi has been in place for a
10 long time. Mr. Kobayashi has been discussing significant
11 events, we understand, as indicated by his counsel, with
12 potential purchasers.

13 The great number of the creditors/customers are in
14 the United States. And we feel that given his report at the
15 creditors' meeting, and given his comments today, that within
16 thirty days it would be appropriate to see what progress he
17 has made at that point in time. I think when you read his
18 report with respect to the creditors' meeting it was roughly
19 along the lines as discussed today, without a lot of detail.
20 And we can understand why, given the nature of what he's
21 doing, maybe that type of information would not be appropriate
22 at that time.

23 On the other hand, this -- the assets are the type of
24 ephemeral assets which are deteriorating or potentially
25 deteriorating every day. So we think it is appropriate to

1 come back in about thirty days and find out exactly what's
2 going on, what specific progress he's made, and reevaluate the
3 situation at that time, Your Honor.

4 THE COURT: Okay. Well, I'm a little surprised at
5 the length of time it's taking. I mean, I'm wondering what I
6 can do about it, if anything. But it seems rather shocking to
7 me a May 2015 bar date. And I'm not -- I mean I remember a
8 report that there might be 120,000 customers, in a 175
9 different countries, and I guess with the translation and what
10 not is needed, that I don't know -- maybe, Mr. Saval, it would
11 be helpful to have the trustee on the phone with a translator
12 to kind of help us understand. Again, I'm not sure what I can
13 do about it, but I do think it might be helpful for me and the
14 creditors in the U.S. to understand why that much time and due
15 process is necessary, in his view, if nothing else, to manage
16 expectations of people.

17 MR. PHELAN: Your Honor, we also have -- our
18 responsibility is to the court in Chicago, and I believe the
19 CoinLab is -- it's responsibility is the court in Seattle.
20 And just that type of a thirty-day situation I think would be
21 useful to let people know what's happened.

22 THE COURT: Okay. And the other thing is, I guess
23 I'm trying to understand better the whole sale process. You
24 know, certainly, as we all know what we're used to in the U.S.
25 is hopefully getting a robust auction going. If there are

1 more than one parties interested in buying, let's do
2 everything we can to kind of play them off each other, and get
3 all the full information out there, and get the highest and
4 best deal. And I'm not -- it sounds like there's a lot of
5 closed-door negotiations going on, and I just -- I kind of
6 would like to hear from Mr. Kobayashi to better understand
7 that.

8 MR. PHELAN: Yes, and --

9 THE COURT: And, again, there's something like 30,000
10 U.S. creditors, right?

11 MR. SAVAL: About that, Your Honor.

12 THE COURT: Okay.

13 MR. SAVAL: And we can, certainly, relay that message
14 back to Mr. Kobayashi. Clearly, he has his court that he's
15 reporting to, that, as I mentioned, is supervising his
16 activities. I did mention that, as would be the case even in
17 a U.S. bankruptcy, where you're pursuing a sale process, the
18 initial stages are to engage purchasers in a process where the
19 purchasers themselves demand nondisclosure agreements, and
20 where it's important to maintain the confidentiality of
21 information so that bids aren't leaked, so that there is not
22 collusive bidding. And those are considerations that could be
23 very relevant here.

24 One thing I would just note for Your Honor is,
25 notwithstanding Mr. Phelan's concerns about progress and

1 wanting to hear more, we attended a status conference
2 telephonically with the district court in Chicago, where the
3 class action plaintiff case is pending, and they told that
4 court that they're satisfied with the progress of these
5 proceedings. They're satisfied with the developments. They
6 understand that Mr. Kobayashi needs to figure out what's the
7 best deal for this estate. And clearly the class action
8 plaintiffs, their interest in this, is fully aligned with
9 Sunlot's interest as a potential purchaser.

10 And they understand that. They had requested that
11 Mr. Kobayashi provide them with a customer list, which was
12 necessary to provide disclosure of the class settlement to
13 those who would be covered by the settlement, which would be
14 the U.S. customers. And clearly the customer list is a
15 valuable asset of estate, if not the most valuable asset of
16 the estate. And I think they understand they can't move
17 forward with their settlement unless and until Mr. Kobayashi
18 decides they are the purchaser that is going to make the best
19 deal for the exchange and is the best deal for customers and
20 the estate.

21 MR. PHELAN: Your Honor, do not take my comments
22 today as any criticism whatsoever of Mr. Kobayashi and his
23 investigation, or his sale process, but we simply would like
24 an update in thirty days.

25 THE COURT: Okay. All right. Well let me hear from

1 CoinLab's counsel. I remember at a prior hearing you
2 expressed --

3 MR. ENGEL: Yes, Your --

4 THE COURT: -- some concern about the sale process
5 and that maybe CoinLab might have an interest. And is there
6 anything you wanted to say about that?

7 MR. ENGEL: Yes, Your Honor. Larry Engel for
8 CoinLab.

9 We had filed in your court, as you recall, in
10 connection with a, I believe, a status conference statement, a
11 rather detailed critique of the Sunlot sale proposal. As far
12 as we know, that criticism is still applicable. We haven't
13 heard of any reforms in response to that. And so that's an
14 outstanding issue as far as we know. And, obviously, the sale
15 process can be and should be enhanced and reformed if --
16 particularly, if they're going to seriously consider that
17 Sunlot proposal.

18 As a separate matter, if I may, just quickly on
19 that -- it's related in a way -- is that I heard counsel say
20 that -- for the trustee, say that Mr. Karpeles was cut off.
21 I'm wondering about that, because as far as we knew Mr.
22 Karpeles controls a hundred percent of Tibanne and acts as
23 Tibanne and is Tibanne. And Tibanne was still, last we heard,
24 continuing to provide assets, get paid, do deals, provide
25 services, et cetera, for the trustee's estate. And if that

1 has been terminated, which would be a good thing from our
2 perspective, we're wondering how Tibanne fits into this. And
3 we hadn't heard a thing about that in the course of this
4 report: is Tibanne, part of the sale process, which -- I
5 mean, are they part of handling the due diligence? They seem
6 to be providing the employees and the assets, as you recall.
7 And it's not clear to me, sort of whether they're part of this
8 still going forward or not. I mean, to the extent that
9 Tibanne is still engaged in this process in a material way,
10 then it seems to me necessarily contrary to what was said.
11 Mr. Karpeles has to be involved because they're the same.

12 So those are the concerns that we have today, unless,
13 Roger, you want to add anything. The thirty-day request by
14 Mr. Phelan sounds like a good idea to me.

15 MR. TOWNSEND: My only add would be that just to
16 further elaborate, that if Tibanne's involved, I understand
17 the employees are employees of Tibanne, therefore I think it's
18 tantamount to saying that the assets of the exchange are owned
19 by Tibanne, or at least that that should be clarified as to
20 what assets we're talking about, or what assets that MtGox
21 takes the position is part of the estate, and what assets are
22 part of the -- are outside of the estate.

23 THE COURT: All right. Mr. Saval, can you address
24 the Tibanne questions? We, of course, recall that the actual
25 employees for the debtor were not debtor employees, they were

1 Tibanne employees. I think there were thirty or so of them,
2 and there were lease arrangements between Tibanne and the
3 estate. I sort of assumed everything was shut down, and all
4 employees, and all cash flow going to Tibanne had stopped, is
5 that not correct?

6 MR. SAVAL: Your Honor, that's my understanding. I
7 believe that there are claims that MtGox has against Tibanne,
8 arising in the ordinary course of their business dealings,
9 separate and apart from what I would call litigation claims.
10 Those have been pursued, and I understand, collected.

11 I had mentioned previously, that Mr. Kobayashi has
12 shut off access for Tibanne and its employees to the data.
13 The exchange is not operational. He and his team, with
14 assistance of his advisors, have access and access alone to
15 that data. Mr. Kobayashi and Mr. Kobayashi alone, and his
16 team, are running the sales process.

17 Certainly, the CoinLab folks have their own parochial
18 interest in knowing the division of assets between Tibanne and
19 MtGox, because they brought a lawsuit against both of them.
20 And, of course, their action against MtGox is stayed. And, as
21 I mentioned earlier, they're seeking to lift the
22 administrative stay against Tibanne. So I would respectfully
23 suggest that the reason why they're pushing this question is
24 because of the fact that they're pursuing those litigation
25 claims.

1 They do claim they're a creditor of the MtGox's
2 estate, but they're very much a disputed creditor. And as
3 Your Honor recognized at the recognition hearing, this case is
4 about the customers. CoinLab's not a customer, they're a
5 competitor.

6 So with all due respect to the question that they
7 raised, I think what I just laid out should satisfy the issues
8 that they have brought before the Court today.

9 One other thing I would note for Your Honor, is that
10 both the class action plaintiffs and the CoinLab have Japanese
11 counsel, they have engaged with Mr. Kobayashi. There have
12 been communications. So they're getting information in Japan
13 about these things as well. So I just want to make sure the
14 record is clear, and that Your Honor is clear, that they are
15 getting information from sources face-to-face in Japan.

16 THE COURT: Okay. Anyone else?

17 MR. TOWNSEND: Your Honor, this is Roger Townsend
18 calling from Seattle.

19 According to the trustee's report on the MtGox web
20 site, MtGox was, at least for a period of time, paying 30,000
21 dollars a month to Tibanne. And that was our understanding,
22 just to be responsive to your question.

23 Secondly, I would not agree that bankruptcy is really
24 only relevant to MtGox customers. I think it's relevant, as
25 any bankruptcy, to creditors. And it's correct, we are a

1 creditor. We have litigated for a year prior to MtGox filing
2 for bankruptcy under dubious circumstances. So I think we'd
3 very much like to litigate that claim and feel very strongly
4 about it. So to the extent that they want to have that
5 dispute we welcome it.

6 THE COURT: Okay. And just refresh my memory: the
7 litigation is pertaining to a license agreement that you had
8 with MtGox -- that CoinLab had with MtGox, that was
9 terminated. And CoinLab asserts damages, I think, fifty
10 million of liquidated damages or something like that?

11 MR. TOWNSEND: Yes, excellent memory. The agreement
12 was with both MtGox and Tibanne.

13 THE COURT: Okay.

14 MR. TOWNSEND: And the reasons it's with Tibanne and
15 the reason why I mentioned the point before is that Tibanne is
16 the -- has all the employees and is therefore the owner of
17 U.S. property, and who -- and the copyrights that were created
18 by Tibanne and then presumably transferred to MtGox. So we
19 have claims against both MtGox and against Tibanne.

20 The intent of that license agreement was that MtGox
21 was -- I mean, CoinLab was to be the exclusive provider of the
22 bitcoin exchange services on the MtGox exchange in both the
23 U.S. and Canada.

24 THE COURT: Okay.

25 MR. TOWNSEND: And that's correct, there's a fifty-

1 million-dollar liquidated damages clause that was specifically
2 negotiated, as well trailing revenues and other claims, and an
3 asserted interest to the intellectual property, again. And of
4 course, to respond to counsel from Brown Rudnick, yes, the
5 reason we're engaged is we do have an interest in the outcome,
6 and we believe a claim -- a valid claim to the assets --

7 THE COURT: Okay.

8 MR. TOWNSEND: -- of both entities.

9 THE COURT: All right. All right. Well, if there's
10 nothing further, let me just react a couple of different ways.
11 I've asked a lot of questions; we've sort of had some, I don't
12 know, slightly awkward Q&A here. And I guess I say awkward
13 because the Court's a little bit in an awkward position.
14 Obviously the U.S. court is just here to assist, as needed,
15 the Japanese court and trustee. And I don't have motions
16 pending before me, but I do have 30,000 U.S. creditors to be
17 concerned about. Well, I'm concerned about all the creditors,
18 naturally, but, in particular, the Japanese bankruptcy
19 trustee's petition for recognition and attachment revealed
20 something like likely 30,000 U.S. customer creditors. So that
21 is a reason for me to ask questions and feel the need to be
22 vigilant here.

23 Also, I mean, obviously I have given MtGox relief.
24 I've given them the benefit of an automatic stay, which stops
25 all those 30,000 U.S. creditors from taking action. So I

1 think part of the quid pro quo here is, I do need to keep
2 informed, and the creditors are entitled to ask questions
3 here.

4 It's also awkward because, obviously, we're dealing
5 with a different set of laws here. We're used everything in
6 the U.S. bankruptcy system being done on a motion practice,
7 motions filed, a public record and being served out on the
8 creditor bodies, and there being time for people to object and
9 show up in court and put on evidence, and put in their views
10 about how things should or shouldn't happen.

11 And it sounds like it's a little bit different --
12 well, I'm not entirely sure, but it sounds like, at this
13 point, there's more behind-the-scenes investigating going on
14 and what we would consider maybe ex parte conversations going
15 on between trustee and court. And if that's their system,
16 that's their system. I have to respect it. But, again, it's
17 just a situation where we're not used to it. We're used to
18 having transparency and disclosure, and lots of information on
19 a step-by-step basis in a bankruptcy case. And in a lot of
20 cases we would have a full-blown auction process six months
21 into a case.

22 So, anyway, all this to say, that's I think a reason
23 for the status conferences. We may not get a whole lot
24 accomplished as fast as we would like, but I want to do
25 anything I can to keep things moving for the creditors and to

1 get information to the creditors, because I think they're
2 entitled to it. And if there's a way we can help in enhancing
3 value, and in helping the liquidation over here in this court,
4 I want to be available to do that.

5 So, again, I don't have any motions before me, so at
6 this point I'm gathering information and listening and making
7 myself available to the parties if they think they need court
8 time.

9 What I would do is sort of compromise on the next
10 status conference. I'm going to set something the beginning
11 of November, okay, so that's not thirty days out, that's not
12 sixty days out, that's before the next meeting of creditors in
13 Japan, that I'll call my courtroom deputy and see what we can
14 do the first week in November, that would be the week of
15 November 3rd. Does anyone have a major scheduling conflict
16 they want to share before we nail that down?

17 MR. MOLTON: Your Honor, hi, it's David Molton. And
18 I may be out there for that conference, but I do have to be in
19 front of a British Virgin Islands court on November 5th. So
20 that would require me to head out to the British Virgin
21 Islands on November 4th and come back on November 6th.

22 THE COURT: Okay, all right. Maybe we'll shoot for
23 the week before then, the week of October 27th. Anyone have a
24 problem? All right, hang on.

25 Traci, the week of October 27th, I need to give MtGox

1 another status conference.

2 MR. PHELAN: Your Honor, just one bit of warning.

3 That Friday is Halloween, and I may come in costume.

4 THE COURT: Aren't you always? Aren't you always?

5 The thing about Mr. Phelan is he does tend to carry out

6 threats like that. So as one who has seen him in a bald head,

7 it was a real bald head, cut off sleeves, a red tuxedo, shall

8 I go on? He carries out his threats; those are at least three

9 in the past he's carried out.

10 MR. ENGEL: Well, Your Honor, this is Larry. As I

11 understand it, he has more hats than any single person we

12 know.

13 THE COURT: That is probably true, and he sometimes

14 puts them on whoever's sitting next to him.

15 All right. October 27th? 28th? Okay.

16 October 28th, 9:30; okay, we'll go with that.

17 All right. So if Mr. Kobayashi's counsel could file

18 a notice with the bankruptcy clerk of the October 28th, 9:30

19 hearing.

20 And, certainly, we're available before that if

21 somebody files a motion that they want to seek a hearing on.

22 But, meanwhile, I plan to look at Mr. Kobayashi's report and

23 better educate myself on the Japanese proceedings. And if I

24 don't hear from you further, we'll see you on the 28th.

25 All right, thank you.

Colloquy

34

1 MR. SAVAL: Thank you for your time, Your Honor.

2 MR. ENGEL: Thank you.

3 THE CLERK: All rise.

4 (Whereupon these proceedings were concluded at 2:19 PM)

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C E R T I F I C A T I O N

I, Esther Accardi, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



September 11, 2014

ESTHER ACCARDI

DATE

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